

AMENDED IN SENATE JULY 16, 2015

AMENDED IN SENATE JUNE 24, 2015

AMENDED IN ASSEMBLY MAY 5, 2015

AMENDED IN ASSEMBLY APRIL 21, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1034

Introduced by Assembly Member Obernolte

(Principal coauthor: Senator Fuller)

(Coauthor: Assembly Member Steinorth)

(Coauthor: Senator Morrell)

February 26, 2015

An act to add Section 2777.3 to the Public Resources Code, relating to surface mining.

LEGISLATIVE COUNSEL'S DIGEST

AB 1034, as amended, Obernolte. Surface mining: reclamation plans: *commercial* renewable energy generation facility.

The Surface Mining and Reclamation Act of 1975 prohibits a person from conducting a surface mining operation unless, among other things, a reclamation plan has been submitted to and approved by the lead agency, as defined, for the operation of the mining operation. The act requires an amendment to an approved reclamation plan that is a substantial deviation from the approved plan to be filed with, and approved by, the lead agency and submitted to the Director of Conservation for review and comment.

~~This bill would establish an alternate procedure for the approval of an amendment to an approved reclamation plan that proposes to use a~~

designated portion of the mined lands for the construction and operation of a renewable energy generation facility. Because a lead agency would be required to determine the applicability of and implement this alternate procedure, this bill would impose a state-mandated local program.

This bill would require a lead agency to consider the construction and operation of a commercial renewable energy generation facility on disturbed mined lands to be an interim use and would prohibit a lead agency from requiring an amendment to an approved reclamation plan if specified criteria are met. The bill would require a lead agency to submit to the director an application for an operating permit for such a commercial renewable energy generation facility prior to approving the operating permit, as specified. The bill would authorize the director to prepare written comments to the operating permit application and would require the lead agency, at least 30 days prior to approving the operating permit, to prepare a written response to the director's comments. By adding to the duties of a local government acting as a lead agency, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 2777.3 is added to the Public Resources~~
- 2 ~~Code, to read:~~
- 3 ~~2777.3. (a) An amendment to an approved reclamation plan~~
- 4 ~~that proposes to use a designated portion of the mined lands for~~
- 5 ~~the construction and operation of a renewable energy generation~~
- 6 ~~facility, including associated onsite structures, equipment,~~
- 7 ~~machines, tools, other materials, or related land improvements,~~
- 8 ~~shall not be deemed to be a substantial deviation from the original~~
- 9 ~~approved reclamation plan for purposes of Section 2777 if the~~
- 10 ~~operator complies with all of the following:~~
- 11 ~~(1) The lead agency, prior to the commencement of land~~
- 12 ~~improvements, approves the amendment to the reclamation plan~~

1 together with any other changes to the reclamation plan necessary
2 to conform with this chapter.

3 ~~(2) The amended reclamation plan incorporates current~~
4 ~~reclamation standards required by this chapter and Article 9~~
5 ~~(commencing with Section 3700) of Subchapter 1 of Chapter 8 of~~
6 ~~Division 2 of Title 14 of the California Code of Regulations with~~
7 ~~respect to the designated portion of the mined lands that is the~~
8 ~~subject of the amendment to the reclamation plan.~~

9 ~~(3) All required permits for the construction, landscaping, or~~
10 ~~related land improvements have been approved by a public agency~~
11 ~~in accordance with applicable provisions of state law and locally~~
12 ~~adopted plans and ordinances, including, but not limited to, the~~
13 ~~California Environmental Quality Act (Division 13 commencing~~
14 ~~with Section 21000).~~

15 ~~(4) The operating permit for the renewable energy generation~~
16 ~~facility has an approved closure plan and financial assurance that~~
17 ~~the lead agency determines to be sufficient to perform the removal~~
18 ~~of the renewable energy generation facility and to restore the~~
19 ~~disturbed lands in conformance with the approved end use. A~~
20 ~~calculated surplus or salvage value shall not be utilized to offset~~
21 ~~the costs of reclaiming the mined lands subject to the approved~~
22 ~~reclamation plan.~~

23 ~~(b) An amendment to an approved reclamation plan described~~
24 ~~in subdivision (a) shall not be adverse to a surface mining~~
25 ~~operator's vested right acquired pursuant to Section 2776 or be~~
26 ~~incompatible with future mineral extraction consistent with~~
27 ~~subparagraph (C) of paragraph (3) of subdivision (e) of Section~~
28 ~~3676 of Title 14 of the California Code of Regulations.~~

29 *SECTION 1. Section 2777.3 is added to the Public Resources*
30 *Code, to read:*

31 *2777.3. (a) The construction and operation of a commercial*
32 *renewable energy generation facility on disturbed mined lands,*
33 *including all foundations and other installations, facilities,*
34 *buildings, accessory structures, and other improvements to the*
35 *land that are related to the generation of energy, shall be*
36 *considered an interim use for the purposes of this chapter and*
37 *shall not require an amendment to an approved reclamation plan*
38 *if all of the following criteria are met:*

1 (1) *The commercial renewable energy generation facility will*
2 *not adversely affect the completion of reclamation in accordance*
3 *with the surface mining operation's approved reclamation plan.*

4 (2) *The permit conditions of the commercial renewable energy*
5 *generation facility address and eliminate any potentially adverse*
6 *impacts on the surface mining operation.*

7 (3) *The operating permit for the commercial renewable energy*
8 *generation facility includes both of the following:*

9 (A) *An approved closure and decommissioning plan that will*
10 *not affect the manner in which reclamation will be achieved*
11 *pursuant to this chapter.*

12 (B) *A separate financial assurance mechanism that the lead*
13 *agency determines to be sufficient to perform the removal of the*
14 *renewable energy generation facility.*

15 (4) *The closure and decommissioning of the commercial*
16 *renewable energy generation facility will occur prior to the later*
17 *of the following:*

18 (A) *The expiration of the use permit for the surface mining*
19 *operation.*

20 (B) *The completion of reclamation in accordance with the*
21 *surface mining operation's approved reclamation plan.*

22 (5) *All required permits for the construction and related land*
23 *improvements have been approved by a public agency in*
24 *accordance with the applicable provisions of state law and locally*
25 *adopted plans and ordinances, including, but not limited to, the*
26 *California Environmental Quality Act (Division 13) (commencing*
27 *with Section 21000).*

28 (b) (1) *Prior to approving an operating permit for a commercial*
29 *renewable energy generation facility subject to this section, the*
30 *lead agency shall submit the operating permit application with all*
31 *the associated maps and plans to the director for review.*

32 (2) *The director shall have 30 days from the receipt of the*
33 *application with associated documents to prepare written*
34 *comments if the director chooses.*

35 (3) *The director may provide comments relating to whether the*
36 *commercial renewable energy generation facility meets the criteria*
37 *set forth in paragraphs (1) to (4), inclusive, of subdivision (a).*

38 (4) *The lead agency shall prepare a written response to the*
39 *director's comments and submit its response to the director at*

1 *least 30 days prior to approval of the operating permit for the*
2 *commercial renewable energy generation facility.*

3 *(c) Copies of all approved permits and associated documents*
4 *shall be submitted to the lead agency and the director as an*
5 *addendum to the approved reclamation plan no less than 30 days*
6 *prior to the commencement of land improvements associated with*
7 *the commercial renewable energy generation facility.*

8 SEC. 2. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 a local agency or school district has the authority to levy service
11 charges, fees, or assessments sufficient to pay for the program or
12 level of service mandated by this act, within the meaning of Section
13 17556 of the Government Code.